UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,125	08/21/2003	Daniel C. Birkestrand	ROC920030189US1	7107

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IBM CORPORATION, INTELLECTUAL PROPERTY LAW
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EXAMINER
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ART UNIT	PAPER NUMBER
2195	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	10/645,125	BIRKESTRAND ET AL.
	Examiner	**Art Unit**	
	MENGYAO ZHE	2195	

*--The **MAILING DATE** of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED <u>16 December 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *none*.

   Claim(s) objected to: *none*.

   Claim(s) rejected: *1-2, 4-13, 30-38*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   _____.

12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). <u>20090105</u>

13. ☒ Other: <u>See Continuation Sheet</u>.

/VAN H NGUYEN/
Primary Examiner, Art Unit 2194

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 20090105

Continuation of 13. Other: The applicant argues on Pg 8 that Sprenkle does not teach that logical partitioning may be done on a single computer. The Examiner had already agreed to this point in the Final Office action, but stated that Sprenkle in view of VMware does teach this portion of the claim, to which the applicant argues that Sprenkle cannot be combine with VMware since Sprenkle and VMware discloses two different types of virtualization. However, the point of incorporating VMware is to show that although Sprenkle does not specifically teach that a single computer may be virtualized or partitioned into different partition units, this does not rule out the possibility that it may. Sprenkle discloses that individual nodes can be combined together to form different partitions that can associated with a grid (Section 3). However, the node is as far as Sprenkle goes, it does not specifically reveal that a node may then further be composed of even smaller partitions. If a node may be divided further into smaller partitions, then it shows that partitions on a single node or computer may then also be associated with the grid since the node itself is associated with the grid and the partitions on the node is part of the node that the grid is associated with. VMware does exactly this. Vmware teaches that a single computer may be partitioned even more into partitions called virtual machines such that a single computer may be composed of multiple virtual machines, as seen in Fig 3. Each virtual machine has the ability of hooking itself up to the network providing the illusion that the virtual machine is an actual physical machine to the user. When VMware is used on Sprenkle, one readily arrives at multiple nodes that are associated with the grid where each node is partitioned into virtual machines, or logical partitions, and thus, each virtual machine, thus hooked onto the network, may also be associated with the entire grid network. .